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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOSE RAFAEL CASTRO-LINO,

12 Petitioner,

13 v.

14 RON HAYNES,

15 Respondent.

16 CASE NO. 3:19-cv-05405-BHS-JRC

17 ORDER TO EXPAND THE
18 RECORD AND PROVIDE A
19 SUPPLEMENTAL ANSWER

20 The District Court has referred this petition for a writ of habeas corpus, filed pursuant to
21 28 U.S.C. § 2254, to United States Magistrate Judge J. Richard Creatura. The District Court's
22 authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules
23 MJR3 and MJR4.

24 Petitioner was convicted in state court of one count of second degree rape and seeks relief
from that conviction. *See* Dkt. 3. His petition lists five grounds for review, including what
appears to be a fifth ground for “[ineffective assistance of counsel], failed to object when the
prosecuting attorney committed prosecutorial misconduct by misstating the law and reducing the

1 State's burden of proof." See Dkt. 3, at 21. However, respondent's answer overlooks the fifth
2 ground. See Dkt. 14, at 4 (citing Dkt. 3, at 5–10). Moreover, although respondent addresses the
3 merits of petitioner's assertions that his attorney rendered ineffective assistance of counsel by
4 failing to object to multiple instances of alleged prosecutorial misconduct and failing to call a
5 witness, the trial transcripts are not included in the state court record filed by respondent. See
6 Dkt. 15.

7 Rule 5(c) of the Rules Governing Section 2254 and 2255 Proceedings authorizes this
8 Court to "order that the respondent furnish other parts of existing transcripts or that parts of
9 untranscribed recordings be transcribed and furnished." Moreover, "[i]f a transcript cannot be
10 obtained, the respondent may submit a narrative summary of the evidence." 28 U.S.C. § 2254,
11 Rule 5.

12 Accordingly, the Court orders respondent to expand the state court record by providing
13 the transcript of petitioner's trial. If the trial transcript cannot be obtained, then respondent may
14 submit a narrative summary of the evidence. Respondent must also file a supplemental answer
15 with up to six pages of additional briefing that addresses petitioner's fifth ground for relief.

16 Respondent shall file the additional state court record on or before October 25, 2019.
17 Respondent shall file the supplemental answer on or before November 1, 2019. Petitioner may
18 file and serve a reply to the supplemental answer no later than November 8, 2019. The Clerk's
19 Office will re-note the petition in this matter for consideration on November 8, 2019.

20 Dated this 8th day of October, 2019.

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J. Richard Creatura
United States Magistrate Judge